

## Calendar No. 362

106TH CONGRESS }  
1st Session }

SENATE

{ REPORT  
106-206

### MIWALETA PARK EXPANSION ACT

NOVEMBER 2, 1999.—Ordered to be printed

Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, submitted the following

### REPORT

[To accompany S. 977]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 977) to provide for the conveyance by the Bureau of Land Management to Douglas County, Oregon, of a county park and certain adjacent land, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. On page 3, delete lines 1 through 5 and insert: “(1) IN GENERAL.—After conveyance of land under subsection (a), the County shall manage the land for public park purposes in a manner so as not to adversely affect attainment of the objectives of the adjacent Late Successional Reserve as described in the Northwest Forest Plan, and in accordance with a management plan for the area developed in cooperation with the United States Fish and Wildlife Service.”.

2. On page 3, delete lines 7 through 9, and insert “(A) IN GENERAL.—If the Secretary determines that the land conveyed under subsection (a) is not being used for public park purposes, at the option of the Secretary—”.

#### PURPOSE OF THE MEASURE

The purpose of S. 977 is to convey a county park and certain adjacent land from the Bureau of Land Management (BLM) to Douglas County, Oregon.

#### BACKGROUND AND NEED

In 1986, Douglas County completed construction of the Galesville Dam on Cow Creek in Southern Oregon on land conveyed to the

County from the BLM in 1985. A year later the County completed a 28.50 acre day use park known as Miwaleta Park, which is operated under an agreement with BLM. The County requested a conveyance under the Recreation and Public Purposes Act (R&PP) in 1993, but R&PP does not allow transfer or lease of formerly Oregon and California Railroad grant lands. Subsequently, this area was included in a Federal Energy Regulatory Commission license area and within a Late Successional Reserve, as designated by the Northwest Forest Plan.

The County wants to construct a campground on a parcel adjacent to Miwaleta Park. An Environmental Analysis done by the BLM in 1998 concluded that it was appropriate to proceed with a proposed campground development on lands adjacent to the park that were currently being used for dispersed, unregulated camping. The proposed development was disapproved by the BLM Regional Ecosystem Office. The proposed development was subsequently approved by the Medford District, BLM, and the Regional Ecosystem Office in September 1999, and Douglas County was granted an expanded right of way to include the campground.

#### LEGISLATIVE HISTORY

S. 977 was introduced by Senators Smith and Wyden on May 6, 1999, and referred to the Committee on Energy and Natural Resources. The Subcommittee on Forests and Public Land Management held a hearing on S. 977 on June 23, 1999. At the business meeting on October 20, 1999, the Committee on Energy and Natural Resources ordered S. 977 favorably reported, with two amendments.

#### COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on October 20, 1999, by a voice vote of a quorum present, recommends that the Senate pass S. 977, if amended as described herein.

#### COMMITTEE AMENDMENTS

The first amendment to S. 977 requires the County to manage the conveyed land for park purposes that are consistent with the objectives of the Late Successional Reserve designation as described in the Northwest Forest Plan and in accordance with a management plan developed in cooperation with the U.S. Fish and Wildlife Service. The second amendment to S. 977 makes the reversion of the land conditional, at the option of the Secretary, if the Secretary determines that the land is not being used for public park purposes.

#### SECTION-BY-SECTION ANALYSIS

*Section 2(a)(1)* requires the Secretary of the Interior to convey, without consideration, the parcel of land, with improvements, described in paragraph (2) to Douglas County, Oregon.

*Paragraph (2)* gives the legal description of the parcel to be conveyed.

*Subsection (b)(1)* allows the County to manage the conveyed land in a manner appropriate for park purposes.

*Paragraph (2)* provides that if the Secretary determines that the land is not being used for park purposes, the land and improvements revert to the United States.

*Subsection (c)* requires a survey of the land to be paid for by the County.

*Subsection (d)(1)* states that the conveyance will not have an effect on rights provided in a Federal Energy Regulatory Commission Withdrawal.

*Paragraph (2)* requires the withdrawal to prevail in a case of conflict between the use of the conveyed land as a park and the purposes of the withdrawal.

*Subsection (e)* requires that, other than the survey, costs of the conveyance shall be borne by the party incurring the costs.

*Subsection (f)* allows the Secretary to require additional terms and conditions if necessary.

#### COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the report is available, the Chairman will request it to be printed in the Congressional Record for the advice of the Senate.

#### REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 977.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 977, as ordered reported.

#### EXECUTIVE COMMUNICATIONS

On October 25, 1999, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth Executive agency recommendations on S. 977. These reports had not been received at the time the report on S. 977 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the Bureau of Land Management at the Subcommittee hearing follows:

#### STATEMENT OF TOM FRY, (ACTING) DIRECTOR, BUREAU OF LAND MANAGEMENT

Thank you for the opportunity to testify on S. 977, the Miwaleta Park Expansion Act. This bill provides for the conveyance of public lands to Douglas County, without consideration, which, upon passage of the bill, would be used for the construction of a campground to be used in

conjunction with the existing Miwaleta Park. The park is currently a county day-use facility and boat ramp at Galesville Reservoir. While we do not support the bill as written, the Bureau of Land Management (BLM) is offering to work with the Committee on considerations that would include protection of Late Successional Reserve (LSR) values consistent with the Northwest Forest Plan (NFP).

The public lands included in the proposed transfer lie within the boundaries of the Galesville LSR, as designated in the Northwest Forest Plan. Because of this special designation, BLM is required to prepare an LSR Assessment of the condition and treatment of these lands. The assessment would address proposed construction of the campground by Douglas County and resulting recreation activities, and how these activities may impact threatened and endangered species in the area. Of considerable concern is a bald eagle nest within one mile of the proposed campground, and several juvenile spotted owls that have been seen in the vicinity. We believe that the center of activity for the owls is within one mile of the proposed campground. It is critical that development and management of a campground be done in a manner that provides adequate protection for these species and other LSR resources. Once the LSR Assessment is approved, BLM can formally consult with the U.S. Fish and Wildlife Service on possible impacts to any threatened and endangered species. At this point, it would be BLM's intent to implement a cooperative management agreement with Douglas County to determine appropriate alternatives for additional recreational facilities.

BLM would prefer to accommodate the proposed expansion through existing administrative authorities other than a legislative land transfer. Options include developing a cooperative management agreement, exchanging the land for lands owned by Douglas County along the North Umpqua River, or leasing the lands under the Recreation and Public Purposes Act (R&PP). We are examining which options would be in the public interest, and be most in keeping with the goals of the proposed project, the BLM's Resource Management Plan for the area, and the objectives for LSRs as described in the Northwest Forest Plan. All of these options could be accommodated within existing laws and authorities and provide an opportunity to develop mitigation measures to ensure that the proposed use does not adversely affect important resource values identified in the LSR Assessment.

The BLM and Douglas County have been working together in an effort to establish a designated campground adjacent to the existing day use area. It has been BLM's intent to establish a partnership for construction and maintenance of the proposed campground, and the BLM has already completed both a site plan and an environmental assessment for the project. While we recognize that the county may have experienced some frustration regard-

ing the length of time it has taken to complete the appropriate assessments and consultations, the nature of the resource values requires us to conduct a thorough and careful review of any impact the proposed activities will have on those resources.

In spite of delays in effecting the development of the campground, the public has been able to use and enjoy the site for several years. Galesville Reservoir is a popular spot for fishing and boating. The BLM has authorized the County to develop and operate a day use area (Miwaleta Park) on adjoining public lands. We agree with the County that there is a critical need for additional recreation facilities in the area to meet existing public demand.

If the Committee does consider a legislative solution, however, we recommend that the following changes be made to S. 977:

Section 2(a)(1) *Conveyance*: In addition, include language as follows: "The Secretary of the Interior (referred to in this section as the 'Secretary') shall convey, for compensation in the amount of fair market value, to Douglas County, Oregon (referred to in this section as the 'County'), all rights, title, mineral rights, and interest of the United States \* \* \*" This addition provides for fair market value compensation, and for conveyance of all mineral rights.

Section 2(b)(1) *In General*: Include language as follows: "After conveyance of land under subsection (a), the County will manage the land for public park purposes in a manner so as not to adversely affect attainment of the objectives of the adjacent Late Successional Reserve as described in the Northwest Forest Plan, and in accordance with a management plan for the area developed in cooperation with the U.S. Fish and Wildlife Service."

Section 2(b)(2)(A)(a)(i) *Reversionary Interest* (1): Include mineral rights. An additional problem with this clause is the fact that, as written, the land would revert to the United States if it is no longer used for park purposes. This leaves the United States with a residual title interest that could trigger liability under the current environmental statutes. Moreover, the land could contain facilities that would require the expenditure of public funds either to remove or repair to a condition that would meet standards for public safety.

If the reversionary clause is not eliminated, we recommend that it be changed to provide that, before title reverts to the United States, the County will be responsible for cleaning any contaminated areas and restoring the land, including any facilities, to a condition acceptable to the United States.

Section 2(c) *Survey*: Specify that the survey should include the boundaries of the FERC Withdrawal. There are some discrepancies, regarding the exact boundary of the FERC withdrawal that may need to be resolved before the bill is passed, to avoid future controversy. We are researching our records to confirm the actual boundaries.

In addition, all references to “park purposes” should be changed to “public park purposes.”

In conclusion the BLM would prefer that we establish a partnership with Douglas County for development and management of the Miwaleta site and that legislation not be enacted. We have been working toward that goal for some time now, and specific management issues can be worked out through existing authorities.

This concludes my testimony. I would be glad to respond to any questions.

#### CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 977 as ordered reported.

